

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of
PUBLIC UTILITIES COMMISSION

Docket No. 2008-0273

HEARING

MOTION TO COMPEL

PUC Hearing Room
465 S. King St., Room B-3, Honolulu, Hawaii 96813

9:30 a.m.

Wednesday, April 7, 2010

BEFORE: BARBARA ACOBA, CSR No. 412, RPR
Notary Public, State of Hawaii

PUBLIC UTILITIES
COMMISSION

2010 APR 16 P 2:59

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1 APPEARANCES:

2 Commissioners: Chairman Carlito Caliboso

3 Commissioner John Cole

4 Commissioner Leslie Kondo

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6 PUC Counsel: Stacey Djou

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8 Consumer Advocate: Lane Tsuchiyama

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17 Zero Emissions: Erik Kvam

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1 CHAIRMAN CALIBOSO: Good morning. I'd like to
2 call this proceeding to order. My name is Carlito
3 Caliboso, Chairman of the Public Utilities Commission.
4 I'm joined by Commissioner John Cole and Commissioner
5 Les Kondo. This is for Docket No. 2008-0273, the Public
6 Utilities Commission's investigation of the feed-in
7 tariffs and this is about Zero Emissions Leasing's
8 motion to compel. Can I have the parties appearances
9 for the record, please.

10 MR. KVAM: Yes. Erik Kvam of Zero Emissions
11 Leasing, LLC.

12 MR. AOKI: Good morning, Mr. Chairman,
13 Commissioner Cole, and Commissioner Kondo. Rod Aoki
14 appearing on behalf of Hawaiian Electric Company, Inc.,
15 Maui Electric Company Limited, and Hawaii Electric Light
16 Company, Inc. And together with me today are Mr. Scott
17 Seu, manager of resource acquisition for Hawaiian
18 Electric, and Darcy Endo-Omoto who's vice president of
19 government and community affairs for HECO.

20 CHAIRMAN CALIBOSO: Thank you.

21 MR. TSUCHIYAMA: Good morning, Mr. Chair,
22 members of the Commission. Lane Tsuchiyama appearing on
23 behalf of the Division of Consumer Advocacy.

24 CHAIRMAN CALIBOSO: All right. We have many
25 parties in this docket, but I presume these are the only

1 parties appearing today. We do have Zero Emissions'
2 motion to compel and Hawaiian Electric's opposition.
3 And we have received no other filings; is that correct?

4 MR. AOKI: I believe, Mr. Chairman, that there
5 was a filing by Blue Planet Foundation which was a
6 statement of no position.

7 CHAIRMAN CALIBOSO: All right. Thank you.
8 Anything else? All right. We will have Movant go
9 first. The opposition by HECO. And Consumer Advocate,
10 you plan on making a statement?

11 MR. TSUCHIYAMA: We would just reserve the
12 right to make comments as appropriate.

13 CHAIRMAN CALIBOSO: Okay. Thank you. Anything
14 else before we get started? Movant.

15 MR. KVAM: Chairman, Commissioners, if the
16 Hawaii Clean Energy Initiative is to have any success in
17 accelerating renewable energy development in the state
18 of Hawaii, it's got to put the Utility under obligations
19 to interconnect and to purchase as-available renewable
20 energy. That's what a feed-in tariff is supposed to do,
21 create obligations on the Utility to interconnect
22 renewable energy generation and to purchase renewable
23 energy from the interconnected projects.

24 If the Commission is going to obligate the
25 Utility to interconnect as-available generation, then

1 the Commission needs to know how much as-available
2 renewable energy generation, we're talking about solar
3 and wind, how much as-available renewable energy could
4 be added to the grid without compromising reliability,
5 taking into account the displacement of dispatchable
6 fossil fuel generation with the as-available renewable
7 energy. I call that question one. And the Utility has
8 the ability to answer question one now with validated
9 electric system models. The Utility possesses something
10 called the General Electric Positive Sequence Load Flow
11 Electric System Model validated for the islands of Oahu,
12 Hawaii, and Maui.

13 The second part, the second obligation that the
14 Commission needs to put the Utility under has to do with
15 the purchase of renewable energy. If the Commission is
16 going to obligate the Utility to purchase renewable
17 energy, then the Commission needs to know how much
18 as-available renewable energy should be added to the
19 grid based on the relative costs of the as-available
20 renewable energy and any dispatchable fossil fuel
21 generation that's displaced by the as-available
22 renewable energy. I call that question two. And for
23 question two, the Utility also possesses models
24 validated for the islands of Oahu, Maui, and Hawaii.
25 That -- those electric system models are called the

1 General Electric Multi Area Production Simulation.

2 Now, the Utility's strategy in this docket has
3 been very simple. They're avoiding any obligations to
4 interconnect or purchase renewable energy. They've
5 proposed a feed-in tariff, at Tier 1 and Tier 2, and now
6 informally proposed a Tier 3 feed-in tariff that does
7 not put them under any obligation to interconnect any
8 as-available renewable energy; that does not put them
9 under any obligation to purchase any as-available
10 renewable energy.

11 The second thing that they've done to avoid
12 obligations is to refuse to give the Commission answers
13 to questions one and two. Again, those questions being:
14 How much could be added without compromising
15 reliability? How much should be added based on the
16 costs? And it's, you know, it's important to realize
17 that this identification, the key issues, I mean, the --
18 these models that I've spoken of, the General Electric
19 PSLF model and the GE MAPS model, their entire purpose
20 is to answer those questions. I mean, this is the --
21 they are the product of the thoughtful consideration of
22 what is needed to actually accelerate renewable energy
23 development on the island of Hawaii -- on the islands of
24 Hawaii.

25 So Zero Emissions asked the information request

1 at issue here, Zero Emissions' request 107 to get an
2 answer to question one. And basically in parts C and D
3 of Zero Emissions' information request, it basically
4 asks how much dispatchable fossil fuel generation could
5 be displaced with as-available renewable energy without
6 compromising reliability? It's a form of question one.
7 The Utility refused to answer parts C and D of Zero
8 Emissions' information request, claiming that any answer
9 would be speculative and inconsistent with the
10 meaningful assessment of system reliability in claiming
11 that no single number could be provided that would be
12 accurate. I submit, your Honor, that this is not a
13 truthful or a helpful response to the information
14 request. The Utility's basically concealing the
15 existence and the results that they have obtained from
16 the General Electric PSLF's electric system model that's
17 been validated for the islands of Oahu, Hawaii, and
18 Maui, and also I failed to mention before the Simulink
19 electric system model that's been validated for the
20 island of Lanai.

21 Terry Sherlis said about the General Electric
22 PSLF models, and also the mass models, that they are
23 "sufficiently accurate to provide reasonable comparisons
24 of impacts on system metrics due to technology, policy,
25 or operational choices." Sufficiently accurate for

1 policy choices. That means that they're accurate enough
2 for the Commission to make its decisions of what
3 appropriate limits should be on the amounts of renewable
4 energy that could be interconnected to the grid without
5 compromising reliability and that should be
6 interconnect -- and that should be purchased by the
7 Utility based on the relative costs of the as-available
8 renewable energy and any dispatchable fossil fuel
9 generation that it displaces.

10 So if the Commission wants the Hawaii Clean
11 Energy Initiative to succeed in the area of renewable
12 energy, it needs truthful answers to question one.

13 Now one way to get an answer is to compel the
14 Utility to answer Zero Emissions' information request
15 107.

16 A second way is for the Commission to pose its
17 own information request, like the Commission's very
18 first information request, PUC IR 101.

19 A third way for the Commission to get the
20 answers is to appoint a qualified expert like National
21 Renewable Energy Laboratory to use the Utility's own
22 validated electric system models to answer question one
23 for the Commission.

24 If the Commission doesn't want an answer to
25 question one, if the Commission wants Hawaii Clean

1 Energy Initiative to fail in the area of renewable
2 energy, then adopt the Utility's proposal for a
3 reliability standards working group. It's basically the
4 same as the integrated resource planning procedure in
5 which intervenors would have no right to obtain answers
6 to question one. No right to bring a motion like this
7 one to get an answer to question one. The Utility would
8 never have to answer question one and, therefore, the
9 Commission would be in no position to obligate the
10 Utility to either interconnect any new renewable
11 generation or to obligate the Utility to purchase any
12 new renewable energy.

13 Now, in their opposition papers, the Utility
14 has argued that I failed to certify, having made a good
15 faith effort to resolve the issue of information request
16 107, under Hawaii Civil Rule of Procedure 37(a)(2). A
17 couple of points. First of all, the PUC's rules of
18 practice procedure don't require a Rule 37(a)(2)
19 certification. In fact, they don't -- as far as I can
20 tell, they don't incorporate the Hawaii Rules of Civil
21 Procedure at all.

22 Second of all, the procedural order in this
23 case doesn't require a Rule 37(a)(2) certification. It
24 merely says -- the only points it makes about motions to
25 compel is that a party seeking production of documents,

1 notwithstanding a party's claim of confidentiality, may
2 file a motion to compel production with the Commission.

3 Here, basically, the Utility's trying to impude
4 bad faith failure to confer, to obscure the fact that
5 the Utility has filed a 125 page reliability standards
6 report that basically actively conceals the existence
7 and results of validated electric system models that
8 would furnish the answers to question one; models that
9 are sufficiently accurate to answer Zero Emissions'
10 information request 107 or whatever information request
11 the Commission might put to the utilities. At the same
12 time, they're saying that no single number can be
13 provided that would be accurate.

14 Now, if you want to deny Zero Emissions'
15 motion, you don't have to make up a rule of procedure
16 that I'm supposed to have -- that Zero Emissions is
17 supposed to have violated to deny it. You can deny the
18 motion and ask your own information request of question
19 one: How much renewable energy can be interconnected to
20 the grid without compromising reliability? Or you can
21 appoint an expert like National Renewable Energy
22 Laboratory to use the company's own validated electric
23 system models to get an answer to question one.

24 So in conclusion, if the Commission wants the
25 Hawaii Clean Energy Initiative to succeed in the area of

1 renewable energy, it should grant Zero Emissions'
2 motion. Thank you.

3 CHAIRMAN CALIBOSO: Thank you. Questions,
4 Commissioner?

5 COMMISSIONER COLE: I'll wait.

6 COMMISSIONER KONDO: I have some questions,
7 Mr. Kvam. Are you familiar with the order that the
8 Company had cited, Order No. 21112, the Commission
9 issued July 12, 2004?

10 MR. KVAM: I'm aware from its reference in
11 their opposition papers.

12 COMMISSIONER KONDO: In that order, the
13 Commission did apply Hawaii Rule of Civil Procedure
14 37(a)(2) and required the Movant in that application, or
15 that motion, to actually confer with the Utility before
16 filing a motion to compel. Assuming the Commission
17 follows Commission precedent, meaning prior Commission
18 orders, can you distinguish that situation from your
19 current situation? I mean, why should not the
20 Commission follow that prior order and require you to
21 follow the Rules of Civil Procedure?

22 MR. KVAM: The Commission can choose to do
23 that, obviously.

24 COMMISSIONER KONDO: Okay. So if the
25 Commission is gonna follow its precedent, then you would

1 concede that we should dismiss this motion as being
2 premature?

3 MR. KVAM: You may dismiss it, but I would say
4 that at the end of the day you still need an answer to
5 question one: How much renewable energy can be
6 interconnected without compromising reliability?

7 COMMISSIONER KONDO: Well, perhaps that's the
8 purpose of the rule is you will talk with the Utility
9 and you'll come out with some information that is
10 satisfactory to you to answer question one and the
11 Commission doesn't have to be involved.

12 MR. KVAM: Yeah, that -- well, yes. It's true.
13 That -- that -- that's a possibility. But I didn't make
14 the conference. I wasn't-- I certainly wasn't aware of
15 that rule at the time that I made the motion.

16 COMMISSIONER KONDO: Well, certainly you were
17 aware of it after the opposition.

18 MR. KVAM: That's correct. Yes.

19 COMMISSIONER KONDO: Did you make any attempt
20 after the opposition to discuss the substance of your
21 motion with the Company and get resolution before the
22 hearing?

23 MR. KVAM: No, I have not, your Honor.

24 COMMISSIONER KONDO: Under question one, hasn't
25 the Commission answered that question by issuing the

1 order saying that the cap on the amount of FIT energy is
2 5 megawatts?

3 MR. KVAM: You mean 5%, your Honor. You mean
4 5%.

5 COMMISSIONER KONDO: 5%, I'm sorry. And
6 project size being 5 megawatts Oahu. Hasn't that
7 question been answered by the Commission? The
8 Commission has set caps. This is what the Utility can
9 incorporate. The Commission's made that determination.
10 And this is what the Company should incorporate via the
11 FIT tariff, hasn't the Commission spoken on that
12 already?

13 MR. KVAM: They've established a cap, but the
14 decision in order doesn't refer to any kind of action
15 analysis to back up the fact -- I don't -- I don't view
16 that as a fact finding, that 5% of as-available
17 renewable energy could be added to the grid of each of
18 the islands. I mean, it's a policy. It's a policy
19 conclusion that they've reached, but I don't read it as
20 a fact finding as to question one.

21 COMMISSIONER KONDO: I guess my concern is, you
22 haven't filed a motion for reconsideration of the caps
23 the Commission set in the FIT order. So the Commission
24 has made the decision. Whether it's based upon fact,
25 whether it's based upon policy, the Commission's made a

1 decision as to the caps. So the Commission, in my mind,
2 has answered your question one and question two: How
3 much should the Utility or can the Utility incorporate?
4 5% on Oahu. How much should the Utility incorporate?
5 5% on Oahu, with some exceptions. But the Commission
6 has spoken on that issue. So I'm not understanding, I
7 guess, the purpose of question one and question two as
8 you've articulated them. It seems to me those questions
9 have been answered by the Commission's order. Can you
10 explain to me why maybe that's not -- my understanding
11 of the Commission order perhaps is not accurate?

12 MR. KVAM: I think that those -- frankly, I
13 think that those caps are based on guesses.

14 COMMISSIONER KONDO: But nevertheless, that's
15 the order, 5%.

16 MR. KVAM: That is the order. I understand. I
17 agree that that is what the Commission has decided.

18 COMMISSIONER KONDO: So what's the purpose of
19 your information that you want given that the Commission
20 has made a decision? Whether or not you agree with it.
21 I don't agree with it. I dissented. But the point is,
22 the Commission has spoken on that. So what's the
23 purpose of your -- the information you want given that
24 maybe the Commission's spoken as to issue one and issue
25 two?

1 MR. KVAM: Because I believe that, you know,
2 there's a public interest here which is, namely, that I
3 think most everyone wants to see an acceleration of
4 renewable energy developed in the state of Hawaii. If
5 we don't have an idea how much could be added without
6 compromising reliability, if we don't have any fact
7 findings of that, then we're not gonna see the renewable
8 energy development happen.

9 COMMISSIONER KONDO: Okay. Shouldn't this
10 investigation or shouldn't your questions be more proper
11 in phase two in the FIT update to investigate whether
12 the caps are appropriate, whether the caps should be
13 moved up or down? I mean, the Commission, like I said,
14 has spoken on this issue. So it seems to me the
15 information you seek, it's really irrelevant at this
16 point.

17 MR. KVAM: Well, I disagree. I think it's
18 entirely relevant.

19 COMMISSIONER KONDO: How would you get the
20 Commission to change its decision at this point,
21 assuming that the information comes back to you and it
22 appears that the Utility can take 20% on its grid?

23 MR. KVAM: Well, the Utility's effectively
24 asked the Commission to change its decision. It's
25 omitted the 5% cap from its proposed feed-in tariff. So

1 they recognize, the Utility recognizes, as well as Zero
2 Emissions does, that the Commission's cap is not based
3 on the fact finding of what amount could be added
4 without compromising reliability.

5 COMMISSIONER KONDO: Well, perhaps we need to
6 read the order better, because my recollection of the
7 order is the cap, with some off-ramps for the Utility as
8 long as it doesn't impact reliability. As long as it
9 doesn't cause unreasonable costs to the rate payer. But
10 those balls seem to be in Utility's court, not Zero
11 Emissions' court.

12 MR. KVAM: You know, do you have a question or
13 I mean, I don't know. I don't want to just argue with
14 you.

15 COMMISSIONER KONDO: Let me change gears a
16 little. What information specifically would you want in
17 response to your information request? What kind of
18 responses are you expecting?

19 MR. KVAM: I would expect at the very least the
20 results of the studies that -- and reports that have
21 been obtained with the validated electric system models
22 that the Utility possess.

23 COMMISSIONER KONDO: Have you gotten copies of
24 those reports?

25 MR. KVAM: No.

1 COMMISSIONER KONDO: Have you asked for copies
2 of those reports?

3 MR. KVAM: I believe that early on in this
4 docket the two reports that I attached in my comments to
5 the reliability standards report, there were two reports
6 that said in a conclusory way, these models have been
7 validated for Maui and for Hawaii, but they don't
8 contain any figures, any quantitative information.

9 COMMISSIONER KONDO: Have you gotten copies of
10 those reports -- I guess you answered no, but have you
11 asked for copies of those reports? That was my
12 question.

13 MR. KVAM: I did not, but I believe that they
14 were produced in response to one of the other
15 intervenor's requests.

16 COMMISSIONER KONDO: Have you read those
17 reports?

18 MR. KVAM: Yes, I have.

19 COMMISSIONER KONDO: Okay. Do those reports
20 contain the information that you want?

21 MR. KVAM: No, they don't.

22 COMMISSIONER KONDO: The reason why I ask that
23 question, because it seems like the response is maybe
24 not totally responsive but pretty responsive to your
25 questions. And what I mean by that is, you ask: What

1 can be curtailed? And they don't necessarily respond to
2 C, but they list to you the must-run units and the
3 levels of energy that those units must -- or the minimum
4 levels that those units must run at. So you can make a
5 determination as to the amount that those units can be
6 reduced or curtailed by taking the total megawatts that
7 they generate versus the minimum that they have to run
8 at. Doesn't that answer the question for you on A?

9 MR. KVAM: No. No.

10 COMMISSIONER KONDO: Why not?

11 MR. KVAM: My motion is to get answers to C and
12 D.

13 COMMISSIONER KONDO: Okay. I'm sorry.

14 MR. KVAM: And I believe that the information
15 has been provided to answers C and D.

16 COMMISSIONER KONDO: I misspoke, C1. Doesn't
17 that answer C1? Because you're asking in C1 the amount
18 in kilowatt hours that the unit can be reduced or
19 curtailed. And as I look at their responses, they're
20 providing you with the capacity unit and the minimum run
21 of the unit. So can't I take that capacity and minus
22 the operating minimum and come out with the amount that
23 it can be reduced or curtailed? So isn't that
24 responsive to 1A -- I'm sorry, C1?

25 MR. KVAM: No, it's not.

1 COMMISSIONER KONDO: Why not?

2 MR. KVAM: I don't believe the information they
3 furnished was for a 24-hour period, 24-hour load cycle.
4 So the answer's no. They just gave kilowatt generating
5 capacity ratings for their various facilities.

6 COMMISSIONER KONDO: But as I understand the
7 response, and maybe you disagree with this, but I
8 understood their response to say that during a
9 particular 24-hour period, there's a lot of factors that
10 come into play to determine how much units can be taken
11 down and how much units must run. Do you disagree with
12 that?

13 MR. KVAM: I beg your pardon?

14 COMMISSIONER KONDO: Do you disagree with that
15 statement by the Company that there's a lot of
16 circumstances that dictate what units can be reduced or
17 curtailed and how much they can be reduced or curtailed
18 during a 24-hour period?

19 MR. KVAM: I don't doubt it's a complex
20 calculation which is why you use validated electric
21 system models to find out the reliability effects from
22 each of those units. Not just the dispatchable units,
23 but the must-run units as well and what their regulating
24 capacity is.

25 COMMISSIONER KONDO: But it seems to me their

1 answer is better than what you want, given that they're
2 telling you across the broad universe of their units how
3 much their units can be reduced or curtailed, because
4 during the 24-hour period, I'm gonna guess that not all
5 the units on Oahu are reduced or curtailed. Some are
6 gonna run at higher levels than the amount that is the
7 minimum run level that they're indicating on -- in their
8 response. So isn't that answer better than what you
9 want? Because it's telling you across the universe the
10 minimum levels that their units can run. So I don't
11 understand what you want in C1.

12 MR. KVAM: Well, I disagree. I think it's a
13 nonanswer to the request.

14 COMMISSIONER KONDO: Okay. And what about C2,
15 then, the amount that the units are being reduced. I
16 mean, I hear you saying that you don't disagree that
17 there's other factors that will dictate what units are
18 gonna be reduced and how much they're gonna be reduced.
19 How did you expect the Company to respond to that given
20 you don't provide them any assumptions? You're just
21 asking in a vacuum in a 24-hour period what is being
22 reduced, but it depends on the day; it depends on the
23 conditions, right? And that's their response. So why
24 is that nonresponsive?

25 MR. KVAM: It's a nonresponse. They haven't

1 furnished any kilowatt hour figures of actual
2 curtailment.

3 COMMISSIONER KONDO: But today may be very
4 different than tomorrow as to what they curtail, because
5 perhaps there's a unit out today so they can't curtail
6 other units. Or Maui's a better situation, maybe it's
7 windy today and so they don't curtail or they curtail
8 that wind unit and tomorrow it's not windy so they don't
9 curtail it at all.

10 MR. KVAM: These numbers are reasonably
11 ascertainable by the Utility. I mean, the Utility's the
12 one that has the data about what their power purchases
13 are and are not from various curtailable units that are
14 on their system. I don't have that information.

15 COMMISSIONER KONDO: Okay. Thank you.

16 CHAIRMAN CALIBOSO: Mr. Kvam, after you
17 received the Company's responses, just want to confirm a
18 couple things, did you do any supplemental information
19 requests?

20 MR. KVAM: No, though I do intend to file
21 information requests tomorrow regarding the Tier 3
22 tariffs.

23 CHAIRMAN CALIBOSO: I'm sorry, but regarding
24 this particular question that's the subject of your
25 motion to compel, did you do any supplemental

1 information requests?

2 MR. KVAM: I did not do supplemental
3 information requests.

4 CHAIRMAN CALIBOSO: Did you contact the Company
5 at all?

6 MR. KVAM: No, I did not. I made this motion
7 about seven days after I received their response.

8 CHAIRMAN CALIBOSO: And you're aware that you
9 had an opportunity to do so?

10 MR. KVAM: Yes. I might have, yes.

11 CHAIRMAN CALIBOSO: Okay. The Company.

12 MR. AOKI: Thank you, Mr. Chairman. I guess to
13 begin with, the Company, for the record, will state that
14 it disagrees with many of the statements made by
15 Mr. Kvam in his opening statement and we are ready to
16 respond to each one of them individually. I guess
17 before we get to that, though, there is a procedural
18 matter that has been addressed and that we've raised in
19 our opposition, which is through the Commission's Order
20 No. 21112 in Docket No. 030371, the Commission set forth
21 a clear standard for motions to compel discovery, and I
22 think the facts in that particular case were striking in
23 how similar they are to the facts at issue here today.

24 In that situation, the Commission, following
25 Hawaii Rule of Civil Procedure Rule 37(a)(2), specified

1 that a motion to the Commission must include a
2 certification the Movant has, in good faith, conferred
3 or attempted to confer with the person or party, in that
4 case failing to make a discovery, in an effort to secure
5 the information material without Commission action. And
6 this case it was Mr. Kvam's burden to come forward with
7 proof that he met that standard and filed that
8 certification. There's no evidence in the record to
9 demonstrate that's been made.

10 This is particularly a situation that I think
11 warrants denial of the motion because as we point out in
12 our opposition and the Commission is aware, this motion
13 to compel was filed in the midst of a supplemental
14 information request process that was agreed to in part
15 by Zero Emissions Leasing, or at least not opposed, and
16 which many of the parties availed themselves of and to
17 which responses were filed by the Company on March 11th.
18 So this is the timeframe.

19 The agreement to have the supplemental
20 information request processed was agreed to and
21 submitted to the Commission as part of the footnote to a
22 letter request on February 23rd, 2010. Our initial
23 responses to the 231 information request was made on
24 March 1st, 2010. Supplemental requests were submitted
25 by a number of parties on March 4th and those

1 responses -- responses to those supplemental information
2 requests were submitted by the Company on March 11th.
3 And Zero Emissions' motion to compel came on March 8th
4 in the middle that process without any attempt to
5 contact anyone at the Company. And so on that basis
6 alone, we believe that the standard was not met and Zero
7 Emissions' motion should be denied.

8 I guess I would ask the Commission for
9 guidance. If you would like us to respond to the rest
10 of the allegations made by Mr. Kvam in his opening
11 statement, we're happy to add to what we've already
12 filed as part of our opposition.

13 CHAIRMAN CALIBOSO: Before you move on,
14 Mr. Aoki, would you, for the record, reference the
15 section in this Commission's administrative rules which
16 ties in the Hawaii Rules of Civil Procedure.

17 MR. AOKI: What we cited to in our papers,
18 Mr. Chairman, was a footnote in the Commission's Order
19 21112 which said that pursuant to Hawaii Administrative
20 Rules 6-61-1, the Commission may refer to the HRCF for
21 guidance whenever HAR Title 6, Chapter 61, is silent on
22 a matter.

23 CHAIRMAN CALIBOSO: All right. Thank you.
24 Anything from the Commissioners on this issue? You're
25 asking for guidance, Mr. Aoki. I don't want to limit

1 you in making your record, so we have time if you want
2 to proceed.

3 MR. AOKI: Thank you, Mr. Chairman. I guess
4 very briefly to expand on what we already submitted in
5 our opposition. First of all, this is not a case, you
6 know, as Mr. Kvam mentioned, your standard stipulated
7 procedural order where there was a blanket objection to
8 producing information based on confidentiality. This is
9 not a case where the companies did not answer and did
10 not respond. In fact, the companies filed 18 pages, six
11 detailed pages each for each utility company, responding
12 to the request. I think this motion, you know, should
13 be interpreted very narrowly. It's whether or not the
14 companies complied with subparts C and D of Zero
15 Emissions' request.

16 I think as Commissioner Kondo was alluding to
17 and discussing with Mr. Kvam, this is a case where we
18 provided detailed answers on what the companies could do
19 as far as curtailing individual generating units. The
20 issue was that Mr. Kvam was requesting, in his request,
21 information which was basically speculative in nature.
22 He was saying, based upon existing information that you
23 have, tell us what in the future, how you in the future
24 will curtail each individual generating unit on the
25 various companies' systems. And what we came back with

1 in answer, as I think you alluded to, Commissioner
2 Kondo, was that there are, in fact, many factors that
3 would affect that decision for each individual unit,
4 including things like system load, ambient conditions,
5 maintenance issues, forced outages, derates, the status
6 of as-available generation on the system that is not
7 dispatchable by the company. And so if we were to
8 provide any number at all as far as kilowatt hours, it
9 would be a guess based on a number of assumptions that
10 the Company tried to put forward. But inevitably, if
11 any one of those elements were incorrect, that guess
12 would also be wrong, and we would submit to the
13 Commission that that is not a basis upon which to base
14 policy, and particularly a basis upon which to set
15 reliability standards. So we take issue with all of the
16 allegations that the Company refused to answer Zero
17 Emissions' questions; refused to answer the Commission's
18 questions. We have put forth detailed answers to those.

19 As to Mr. Kvam's general statement that
20 Reliability Standards Working Group will be some type of
21 vehicle through which he will be denied due process, I
22 think that that is absolutely incorrect. I think we
23 have made clear in our filings both of February 26 as
24 well as March -- I'm sorry, February 26 as well
25 March 31st, 2010, that the companies intend this process

1 to be a transparent and comprehensive state quarter
2 process to which we would invite the Commission to
3 appoint an independent facilitator to oversee that
4 process to ensure that it is transparent and that
5 parties have appropriate due process as part of that
6 proceeding.

7 I suppose the last thing is, Mr. Kvam makes a
8 suggestion that as an alternative to compelling some
9 response to his information request, the Commission
10 could appoint a qualified expert to investigate these
11 types of issues. And I guess I would point out as part
12 of our February 26th and March 31st filings, we have, in
13 fact, suggested that it would be important to prevail
14 upon certain of the national labs to bring in their
15 expertise, in part to identify solutions to these issues
16 that we recognize that can be implemented very quickly.

17 So with that, I think I'd close, Mr. Chairman,
18 unless you have any further question.

19 CHAIRMAN CALIBOSO: Any questions?

20 COMMISSIONER KONDO: I have a question.
21 Assuming that the Commission is gonna rule on the
22 substance of the motion, assuming that the questions
23 that Mr. Kvam wants answered are relevant to the
24 proceeding, why can't you give him information about the
25 amount that the company-owned units are being reduced or

1 curtailed on the various systems and also provide him
2 information as to the amount of the IPP generation, the
3 levels that you're accepting? I know that you don't
4 know how much they could put into the system because
5 that's not your unit, but you certainly curtail or
6 reduce the input that you take on the system in various
7 conditions. Why can't you provide him that information
8 on a typical 24-hour profile? You provide us that
9 information on a typical 24-hour profile frequently and
10 I look at your reliability standard, Attachment A, that
11 you reference or Attachment 4, I'm sorry, and it has
12 those type of 24-hour typical profiles. Why can't you
13 provide him that information, even though he hasn't
14 provided you with assumptions as to what to base your
15 answer on?

16 MR. AOKI: I think the concern, as we
17 mentioned, I think as part of this process we have
18 tried, including through the supplemental information
19 request process, to be as transparent and open in
20 disclosing information to the parties as possible. So
21 the SIR process was agreed to, in part, so that if the
22 responses to the original information request weren't
23 sufficient, that the companies were willing to follow up
24 to try to get answers. So I think to the extent that,
25 you know, we could, you know, certainly be willing to do

1 that.

2 That said, in response to the specific four
3 corners of the information request presented, which was
4 to make certain assumptions into the future without any
5 types of guidelines or metrics upon which to do that for
6 each generating unit and to run a kilowatt hour numbers,
7 something very specific, that, we felt, would require
8 somewhat speculation as not to be helpful to the record
9 and not to add anything substantive. That said, on a
10 system-wide basis, I think the reliability standard
11 filing that we made, we tried to quantify those numbers
12 to the extent we can looking at a number of variables on
13 each system.

14 COMMISSIONER KONDO: One of his questions isn't
15 forward looking. It's, what are being curtailed? What
16 are being reduced? So it's not asking for you to
17 speculate or guess. It's asking, currently, what's
18 happening? And those answers you could provide him
19 given a typical day, for instance, on Maui; is that
20 correct?

21 MR. AOKI: I believe that's correct,
22 Commissioner. I believe as to existing levels of
23 curtailment, I know at least for the Company's nonfossil
24 units on certain of the systems, I'm thinking in
25 particular the HELCo. system, we have repeatedly, you

1 know, submitted the answer that wherever possible, the
2 companies are curtailing back those resources to their
3 minimums in consideration of appropriate reserves being
4 on the system to accommodate as much as-available energy
5 as possible. And I think in other responses, and I
6 apologize, I can't recall offhand the responses to the
7 other information requests that were submitted, and,
8 again, just in the first round there were 231 with
9 subparts and then there was the SIR process that may
10 have already provided that information, but I can follow
11 up.

12 COMMISSIONER KONDO: So your answer is yes?

13 MR. AOKI: Yes.

14 COMMISSIONER KONDO: Okay. Thank you.

15 MS. DJOU: Could I ask, would that information
16 be helpful to the Commission given that I understand
17 HECO.'s position to be that reliability constraints are
18 based on existing plus planned units; is that correct?

19 MR. AOKI: That's correct.

20 MS. DJOU: To follow up on Commissioner Kondo's
21 question. Given that, would you be able to provide a
22 typical -- that would be the future issue that you were
23 talking about, but I guess the direct question is:
24 Would you be able to provide us existing plus planned
25 and give us a typical, or you wouldn't be able to do

1 that until they come onto your system?

2 MR. AOKI: That is my understanding. That
3 until we know what is coming on, when and what location,
4 what the particular parameters are of each generating
5 unit addition that's coming on, that it's very difficult
6 to do that. I think given particular inputs and
7 timeframes, you know, assumptions can be made and
8 whatever the results of that analysis would be, would
9 have to be taken in the context of the inputs that were
10 provided. But that, again, is something that we hope to
11 address as part of the Reliability Standards Working
12 Group, to bring in the experts necessary to have the
13 transparent and open state quarter process to analyze
14 those issues, identify solutions, and implement them as
15 soon as possible so that we can take on more
16 as-available energy onto the systems.

17 COMMISSIONER COLE: This is for Mr. Aoki, too.
18 I know Mr. Kvam's IR 107 doesn't make direct mention of
19 models, but he certainly has this morning, indicating
20 that what he is after is results of a model run on
21 different or amounts that could be added to the system.
22 If he had made it more clear, would you have information
23 or results of model runs like that that would be
24 responsive to a request like this?

25 MR. AOKI: Thank you, Commissioner. I also

1 noted in my notes that, you know, that's the first time
2 we heard from Mr. Kvam and from Zero Emissions about
3 these studies and what he purports them to say. I
4 really don't know offhand. I could certainly check. I
5 know there are some ongoing studies, which my
6 understanding are confidential in nature. I don't know
7 the status of whether or not they're completed.

8 COMMISSIONER COLE: Before Scott answers, do
9 you know if there's been any other information request
10 asking for results of runs of models?

11 MR. AOKI: I don't believe so.

12 COMMISSIONER COLE: Okay.

13 MR. SEU: Mr. Commissioner, with regard to some
14 of these other studies, I think it's important to
15 distinguish that, for example, a study that might look
16 at a situation on Maui will or has been focused
17 specifically on what are the integration issues
18 pertaining to a specific proposed project. And the
19 studies are not or were not intended to look at
20 answering the overall question, what's the maximum
21 amount of intermittent renewables that could be added to
22 a particular system? So that's a very important
23 distinction. And I think what we were trying to convey
24 in our filing on proposing the Reliability Standards
25 Working Group is that that's the kind of study that does

1 need to be commissioned and conducted to answer that
2 question.

3 COMMISSIONER COLE: Okay. Are you using study
4 to be synonymous with model or is there a model where
5 you can vary inputs and see what the outputs or varied
6 results on the reliability of the system might be?

7 MR. SEU: The answer is yes, there are models.
8 And as an example, when you have a model such as
9 referred to from General Electric, it is a generic model
10 and the model needs to be set up with the specifics of a
11 particular electric system. So the model needs to be
12 tailor-made specifically to, for example, the Maui
13 system or the Big Island or Oahu, and once that is done,
14 generally you go through a validation process to test
15 whether or not the model is reasonably accurate in
16 representing how the system will respond.

17 Once you have gone through that process, at
18 that point you will construct the assumptions that are
19 to be then built into the model and you're looking at
20 specific scenarios. So that's the general process by
21 which you use a model. And when we use the term
22 studies, we generally just say, this is a wind
23 integration study, for example, and by that we are
24 implying that, yes, we will be using these models to
25 conduct the actual analysis.

1 COMMISSIONER COLE: So are you through that
2 validation process on any of the systems with various
3 models of one model?

4 MR. SEU: We are -- we have done that
5 validation for at least a study pertaining to the island
6 of Maui. That particular study is being conducted under
7 the terms of a confidential settlement agreement. What
8 we would do as we look at the Reliability Standards
9 Working Group is basically follow a similar process
10 looking at Maui and very much possibly that we would use
11 the same type of a model.

12 COMMISSIONER COLE: Okay. Thank you.

13 CHAIRMAN CALIBOSO: Thank you. Mr. Aoki, I
14 think one of the things I understood you to say was that
15 one of the difficulties in answering these questions are
16 the number of assumptions that need to be made in order
17 to do so. My question is: Would working more closely
18 with the Movant on those questions and perhaps agreeing
19 upon certain assumptions that can be made or used in
20 answering those questions, would that have been helpful
21 in allowing the Company to come up with a way to answer
22 those questions?

23 MR. AOKI: I suppose it would've been more
24 helpful in trying to provide some of the answers, but I
25 don't know that it would've changed the conclusion that

1 the result of that process would be speculative absent a
2 larger study of the entire system, as we were talking
3 about. To make assumptions individually for generating
4 units kind of in a vacuum, I don't know that would be
5 helpful for anything that could be relied upon in
6 establishing reliability standards or trying to set
7 these numbers.

8 CHAIRMAN CALIBOSO: But you could've come up
9 with those assumptions and made that qualifying
10 statement or made that argument that it's not worth
11 anything or can't be used or relied upon, but you
12 could've answered those questions based on assumptions
13 agreed upon. Well, can you -- it could've been done
14 that way, right, Mr. Aoki?

15 MR. AOKI: To make the assumptions and qualify
16 the results accordingly.

17 CHAIRMAN CALIBOSO: Mr. Seu, you may respond.

18 MR. SEU: Mr. Chair, one thing I should clarify
19 is that these are not simple models. These are not
20 spreadsheet models that you input a few variables into
21 cells and then let it go. The models as you look at the
22 various assumptions, these are very complex assumptions
23 which include how the different generating units may be
24 operating at any given moment on the system; what the
25 nature of the load flows are; and especially, too, the

1 behavior of the intermittent renewables and where they
2 are located. There are so many different variables and
3 permutations I would say that you can come up with. And
4 my basic point is that even with a certain set of
5 assumptions that may have been provided in the
6 information request, I don't believe that unless you
7 know what the models are, how they are structured, and
8 what they are set up to do, I don't know that those
9 assumptions would have actually enabled the technical
10 modelers to actually run the models. These models
11 typically are, first, validated and then actually used
12 over the course of many months. Now, I'm not a
13 technical modeling expert in any way, so I'm not able
14 today to explain the details that are required, but
15 that's my understanding.

16 CHAIRMAN CALIBOSO: Thank you. Is that it for
17 HECO.?

18 MR. AOKI: That's it. Thank you, Mr. Chairman.

19 CHAIRMAN CALIBOSO: Would the Consumer Advocate
20 like to make a statement or take a position on this at
21 all?

22 MR. TSUCHIYAMA: No. No position.

23 CHAIRMAN CALIBOSO: Thank you. Mr. Kvam, as
24 Movant you're entitled to close.

25 MR. KVAM: Well, I think what we've heard is

1 that validated electric system models, they've been
2 admitted to exist for Maui. Actually, they're admitted
3 to exist in the documents that I attached to my comments
4 on the HECO. proposed reliability standards. It's up to
5 the Commission. I mean, you can find caps. You can
6 make up any kind of findings of caps you want, but
7 ultimately we need answers to these two questions.
8 Otherwise, renewable energy development in the state is
9 gonna languish. You're looking at another year, maybe a
10 couple more years, you know, till we get -- till we get
11 the results of the process called Reliability Standards
12 Working Group in which I haven't heard that the
13 intervenors would have any right -- any information
14 rights. It's one thing to say, oh, it's transparent,
15 but to not have the right to be able to sit here and
16 assist and move to compel answers to information
17 requests, that's not gonna -- that's not gonna serve.

18 So, you know, I don't want to just rehash
19 everything I said in my opening, but truthful answers
20 are needed to these two questions and the two questions
21 for which the Utility possesses validated models for,
22 the two questions are: How much can be added without
23 compromising reliability? How much should be added
24 based on the relative costs of what you're adding? And
25 I thank the Commission for its attention today.

1 CHAIRMAN CALIBOSO: Thank you. Any other
2 questions? All right. Thank you very much. We will
3 take it under advisement. We are adjourned.

4 (Hearing concluded at 10:18 a.m.)
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C E R T I F I C A T E

STATE OF HAWAII)


CITY AND COUNTY OF HONOLULU)

I, BARBARA ACOBA, Certified Shorthand
Reporter and Notary Public, State of Hawaii, do
hereby certify:

That on Wednesday, April 7, 2010, at
9:30 a.m., the foregoing Hearing was taken down by me in
machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct transcript of the proceedings had in the
foregoing matter.

I further certify that I am not an attorney
for any of the parties hereto, nor in any way concerned
with the cause.

Dated this 13th day of April, 2010,
in Honolulu, Hawaii.



BARBARA ACOBA, CSR NO. 412

Notary Public, State of Hawaii

My Commission Exp: 10-22-2012